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FEDERAL COMMUNICATIONS COMMISSION
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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of | ) | |
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| LCI's Petition for Expedited Declaratory | ) | CC Docket No. 98-5 |
| Rulings Regarding its "Fast Track" Plan to | ) | |
| Expedite Residential Local Competition | ) | |

**REPLY COMMENTS OF**
**SBC COMMUNICATIONS INC.**

SBC COMMUNICATIONS, INC.

Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak

One Bell Plaza, Room 3008
Room 3008
Dallas, Texas 75202
214-464-5388

PACIFIC BELL
NEVADA BELL

Nancy Woolf

140 New Montgomery Street
Room 1523
San Francisco, California 94105
415-542-7657

April 22, 1998

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**REPLY COMMENTS OF**
**SBC COMMUNICATIONS INC.**

SBC Communications Inc. ("SBC"), by its attorneys, and on behalf of its Bell Operating Company ("BOC") subsidiaries, Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell, respectfully files these Reply Comments in response to comments filed by several parties on March 23, 1998, regarding the above-captioned January 22, 1998 Petition of LCI International Telecom Corp. for Expedited Declaratory Ruling ("LCI/Petition"). LCI's Petition asks the Commission to declare that, if any BOC "voluntarily" adopts an extreme form of structural separation for its competitive lines of business (along with many other punitive terms and conditions), then such BOC will be entitled to a "rebuttable presumption" that it has met the statutory checklist for interLATA relief under Section 271 of the Telecommunications Act of 1996 (47 U.S.C. Section 271) (the "Act").

Except for the parties that would benefit competitively from such severe handicapping of the BOCs, the commenting parties generally agree with the main points made in SBC's March 23 Comments: adopting LCI's proposal would disserve consumers and the public interest in general. For these and several other reasons, the Petition should be rejected.

## I. INTRODUCTION

The primary point of SBC's original Comments in this proceeding was that "LCI's filing fails to show how its proposal would benefit any consumers, let alone residence consumers, short-term or long-term."[1] Significantly, in addition to other BOC entities filing comments herein,[2] several non-BOC parties strongly agreed with SBC on this point. To the extent that certain parties raise points in opposition to those made by SBC, in each case they can be easily exposed as either self interest-motivated, inequitable, unworkable or all of the above and, in any case, unfounded.

## II. LCI'S PROPOSAL WOULD NOT BENEFIT CONSUMERS.

All of the BOC entities agree that LCI's proposal would not benefit, and in fact, would harm, consumers in general.[3] Significantly, so did parties that are independent from the BOCs. For example, the Campaign for Telecom Access stated:

- proposal will inhibit universal spread of advanced technologies. p. 4
- . . . could risk the excellent technologies already available. pp. 4-5.
- First, the proposal would prohibit some opportunities for introducing advanced technology. Second, the proposal would add further burdens to already existing disincentives to bringing affordable and usable new technologies to people with disabilities and older adults where they live, and it may even foster a decline in service using existing technologies. Third, the proposal has the effect of being a charade that would divert Commission and state commission resources already going on to reconfigure the industry. p. 5
- If all innovation is pushed into the hands of service providers who do not own networks, the service providers will have no incentive to introduce new products and services universally and affordably. p. 6.
- A freestanding network company that only sells to resale providers and that is regulated as telephone companies have been historically – the lot suggested for such companies by the LCI proposal – would have precious little incentive to innovate. p. 7
- If [high profit market segments] are separated from the whole market and served by competitors and LCI's so called "ServeCos," the Campaign's constituents risk becoming the second-rate customers of a second-rate network. p. 8

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[1] SBC, p. 4.

[2] Ameritech, pp. 3, 12-14; Bell Atlantic, p. 6; U S West, pp. ii, 21.

[3] Ameritech, pp. 3, 12-14; Bell Atlantic, p. 6; BellSouth, pp. ii, 6-12; U S West, pp. ii, 21.

Along similar lines, the State Advocates noted that:

- The transfer of new customers, and the balloting of old customers, may mean that some consumers will lose the opportunity to continue purchasing from NetCo. This could also lead to some confusion among consumers. p. 4.
- State advocates are concerned as to how the residential rates for ServeCo and the CLECs will compare with the rates of their incumbent RBOC provider. It is also not clear how corporate restructuring will affect the supplier of last resort obligation. p. 5.
- State advocates are concerned that . . . it is not clear that rate reductions for the residential consumers would result from LCI's proposal. p. 5.

Further, several parties recognized that the LCI plan would produce precisely the wrong incentives for the restructured BOC companies, also to the ultimate detriment of the consumer. For example, Ad Hoc observed that:

- Given current circumstances, RBOCs would have little apparent incentive to opt for the LCI fast track approach. p. 13.

Likewise, ICG made the case that:

- As long as NetCo exists as a relatively independent entity, it would be motivated to resist any developments that would be likely to reduce the size of the carrier's carrier market. Indeed, NetCo would be motivated to do whatever it could to discourage the entry of facilities-based carriers, in an area where significant entry barriers already exist, and to encourage the use of its own facilities. p. 5

The Connecticut Department of Public Utility Control, a state regulatory commission with substantial experience in the areas involved in LCI's Petition due to the current SNET "wholesale/retail" corporate structuring, made essentially the same observation, noting that LCI's "Fast Track" plan severely limits the usefulness of the LCI model for the BOCs and the probability that they would accept this model as a condition of Section 271 approval.[4] This Commission should extend special deference to a state commission such as Connecticut that has

[4] Connecticut, p. 2.

already gone through the issues raised by the LCI Petition, in great detail and over a lengthy period.

Another area of agreement with SBC's points, even among non-BOC commentors, is the very legitimate concern about under-recovery of BOC costs, both for ongoing services and the embedded costs of BOC networks. As an example, the Campaign for Telecom Access stated:

- The Bell Operating Companies . . . have a major investment in networks. p. 8.
- . . . the Commission has adopted TELRIC cost standards. Presumably, LCI would have the Commission and state commissions price network services based upon that standard. In the Campaign's view, that standard does not appear to cover the imbedded costs for operating the networks. p. 7
- Breaking up the network function of the Bell operating companies from the service function: . . .(ii) risks creating network companies that are not even fully compensated for their services. . p. 8.

Ad Hoc had the same sorts of concerns, noting that LCI makes no allowance for the fact that by requiring the network company to set rates for Unbundled Network Elements ("UNEs") at TELRIC costs (Total Element Long Run Incremental Cost), and by expressly precluding the network company from using its embedded infrastructure for its own competitive benefit, the network company would not have an opportunity to recover its embedded rate base investment.[5] Ad Hoc also recognized that any such plan would have to deal appropriately with the inevitable issue of stranded BOC costs that would result from adopting any plan like that of LCI.[6] Indeed, it is difficult to see how any "NetCo" could attract even a single investor, knowing that its business was destined only to decline.

No party rebuts the fact that any proposal like LCI's would be extraordinarily expensive, nor that consumers ultimately would bear those costs. There would be equipment relocation costs, redundant personnel expenses, investment in duplicate facilities, and increases in

---

[5] Ad Hoc, pp. 10-11.

[6] Id., p. 11.

administrative and overhead costs. Effectively raising BOC cost structures would exert unacceptable pressures on the BOCs to increase retail prices and deny consumers the opportunity to take advantage of the lower prices reflecting cost efficiencies that could be realized from continuing to provide services jointly. Additionally, the BOCs would be forced to ignore the more favorable deployment considerations of providing an entire array of telecommunications services on an integrated basis. By worsening the BOCs' competitive positions in markets -- while yielding no significant benefits to consumers by either lowering prices or increasing the array of available services -- structural separation can properly be regarded as a policy designed to protect competitors rather than competition.

ICG agreed with SBC's observation that LCI's proposal could adversely affect BOC network companies' incentives to work with facilities based competitors and to support adequately the development of true facilities - based competition.[7] This is a crucial factor for the Commission to take into account in evaluating LCI's proposal. It is beyond debate that Congress, in passing the 1996 Act, desired greater development of facilities-based competition.[8] SBC's concerns about LCI's proposal[9] in terms of its likely effect upon the evolution of facilities-based competition are supported by other commentors, are not refuted by any party's comments, and should be weighed carefully in the Commission's assessment of LCI's proposal.

Considering the likely direct and indirect effects of LCI's proposal, among the parties that can be objective in this proceeding there is a general view that those effects definitely would

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[7] ICG, p. 5.

[8] See 47 U.S.C. Section 271(c)(1)(A), and all Commission orders to date on BOC 271 applications.

[9] SBC Comments, pp. 27-28.

not benefit consumers, in the short-run or the long-run. That should be a critical factor in the Commission's evaluation of this ill-advised proposal.

## III. PARTIES URGING MANDATORY DIVESTITURE ARE OUT OF LINE.

Incredibly, several parties appear to be urging the Commission to mandate total divestiture for BOC competitive operations.[10] SBC has already explained in detail why the Commission lacks authority even to adopt the so-called "optional" proposal put forth by LCI's Petition, let alone such a mandatory requirement for BOC Section 271 approval.[11] SBC will not burden the record further by repeating all of those points here.

However, SBC would like to point out that, despite all the emphasis placed on these parties' recommendations for some sort of mandatory BOC retail divestiture, the record is remarkably barren of any showing whatsoever that consumers would benefit in any way from such a drastic regulatory measure. SBC urges the Commission to give great weight to the Comments of the Campaign for Telecom Access, a diverse group of organizations whose sole purpose is "ensuring that older adults and people with disabilities – and all citizens for that matter – have the opportunity to live independent, productive lives and have the accommodations that allow them to be as fully integrated into the community as possible."[12] To be sure, a group including such organizations as the Aging Forum, Inc., College for Living, Missouri Association for the Deaf, Missouri Council of the Blind, and the National Silver Haired Congress, have provided an opinion of what is truly in or not in the "public interest" – particularly from the perspective of the consumer. The many valid points made in these parties' Comments stressing the likely detriments to consumers of the LCI plan are all the more

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[10] See, e.g., MCI, p. 4; WorldCom, p. 1; KMC, p. ii; FiberNet, p. 2; Level 3, p. iii.

[11] SBC Comments, pp. 12-13; 23-26.

[12] Campaign for Telecom Access, p. 1.

applicable and significant when considering something like a mandatory BOC divestiture requirement from this Commission.

Perhaps the single best summary of the correct view of LCI's proposal is provided by the Comments of these parties:

> [T]he Campaign's foremost concern in the telecommunications re-regulation that has gone on over the past several years is this: Does each proposal guarantee that advanced technologies will reach, and current technologies will continue to reach, our constituents geographically, technologically, and affordably even though our constituents are spread all over America?
>
> We measure the LCI proposal according to whether it supports that end. We believe the proposal does not. We fear the proposal will inhibit universal spread of advanced technologies. We fear it even could risk the excellent telecommunications technologies already available. We think the Commission should be extremely cautious in responding to the proposal.[13]

The parties herein that are urging the Commission to mandate BOC retail divestiture are plainly advancing only their own competitive self-interests, and the Commission should not be drawn into their plot.

## IV. OTHER PARTIES LIKEWISE ADVANCE ILL-CONCEIVED REQUESTS.

Some parties assert that the appropriate BOC break-up is not between wholesale and retail operations but between physical loop plant and all the rest of a BOC's plant.[14] This so-called "LoopCo" proposal is even more nonsensical than LCI's. Nowhere do any of these parties address such fundamental considerations as how a LoopCo could continue to fulfill legal obligations such as collocation requirements. Presumably, they would no longer own any central office-type facilities. How could the switching services provider BOC entity provide collocation to competitors and yet also be a pure "competitive" entity on a par with CLECs? In addition, it seems obvious that a separated LoopCo would need an entirely different/new set of Operations

[13] Id., pp. 4-5.

[14] See, e.g., MCI, p. 4; KMC, p. i & ii; Level 3 Communications, p. iii.

Support systems ("OSS") to act independently of all other BOC plant. No one addresses how this could be accomplished efficiently or economically -- probably because it could not. The "LoopCo" concept is a half-baked notion deserving no Commission attention herein.

Parties asserting that BOC OSS systems do not meet legal requirements nor new entrants' needs[15] are in plain error as far as SBC is concerned.[16] Although no further data should be necessary to establish that fact to the satisfaction of any objective party, Attachment A hereto is offered as still further evidence. Attachment A is a March 19, 1998 ex parte filed by SBC formally notifying the Commission of SBC's agreement to implement the Justice Department's comprehensive list of performance measurements. Overall, SBC is adopting a total of 66 different performance measurements that will demonstrate beyond doubt that SBC is offering its competitors complete parity in the OSS arena and, for that matter, in all other areas where competitive parity is required of ILECs by the 1996 Act. Part of Attachment A is a March 6, 1998 letter from the Department of Justice to SBC stating: "we are satisfied that the performance measures . . . to which SBC has agreed, would be sufficient, if properly implemented, to satisfy the Department's need for performance measures for evaluating a Section 271 application . . . ." Certainly, SBC could not have obtained such an endorsement from the Department of Justice for a set of performance measurements applicable to an inferior OSS access offering.

SBC's opponents in the interLATA relief arena should start expending less effort in trying to denigrate SBC's OSS access arrangements and more effort in actually trying to utilize them.

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[15] E.g., Cable Wireless, p. 14; MCI, pp. 5-7.

[16] See SBC Comments, pp. 17-21, and Attachment C thereto.

## V. CONCLUSION

In its Comments, SBC made five basic points: (1) that LCI totally failed to show how its proposal could possibly be of any benefit to consumers; (2) that there in fact is no conflict of interest between the BOCs' role as network suppliers and their role as service providers; (3) that LCI's three alleged barriers to local service entry are non-existent within SBC's operating territories; (4) that adopting LCI's proposal would exceed the Commission's jurisdiction; and (5) that LCI's so-called "seven minimums" would in reality be seven manacles that which would unfairly and unlawfully handcuff nearly all BOC competitive efforts (also to the detriment of consumers, ultimately). No other commenting party has brought forth any data or arguments that invalidate those points. Several other commenting parties – including even non-BOC entities – fully support many of these SBC positions.

SBC reiterates: LCI's proposal would produce no benefits for consumers and, in fact, would harm them significantly . The proposal is also unnecessary and unlawful. The Commission would be wise to reject it.

Respectfully submitted,

SBC COMMUNICATIONS, INC.

By: ______________________
Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak

Its Attorneys

PACIFIC BELL
NEVADA BELL

By: ______________________
Nancy Woolf

140 New Montgomery Street
Room 1523
San Francisco, California 94105
(415) 542-7657

Its Attorney

April 22, 1998

Todd F. Silbergeld
Director
Federal Regulatory

SBC Communications Inc.
1401 I Street, N.W.
Suite 1100
Washington, D.C. 20005
Phone 202 326-8888
Fax 202 408-4806

March 19, 1998

**NOTICE OF EX PARTE PRESENTATION**

RECEIVED
MAR 19 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: In the Matters of Implementation of the Local Competition Provisions in the Telecommunications Act of 1998, CC Docket No. 96-98; Petition For Expedited Rulemaking by LCI International Telecom Corp. and Competitive Telecommunications Association, RM 9101; Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121

Dear Ms. Salas:

Please be advised that yesterday Martin Grambow, Vice President and General Counsel, SBC Telecommunications, Inc., Paul Mancini, General Attorney, SBC Communications Inc., Elizabeth Ham, Executive Director-Interconnection and Resale Technical Implementation, Southwestern Bell Telephone Company, and Randy Dysart, Area Manager-Performance Measurements, Southwestern Bell Telephone Company, and the undersigned met with Michael Pryor, Bill Agee, Jake Jennings, Radhika Karmarkar, David Kirschner, Wendy Lader, Brent Olson, Jeannie Su, and Joe Welch of the Common Carrier Bureau's Policy and Program Planning Division and Patrick DeGraba of the Office of Plans and Policy in connection with the above-referenced proceedings. The purpose of the meeting was to discuss the methods Southwestern Bell is offering for access to its operations support systems (OSS) and the issue of performance measurements.

Under the Telecommunications Act of 1996, incumbent local exchange carriers (LECs) are obligated to offer, under nondiscriminatory conditions, retail services for resale at wholesale rates and to provide nondiscriminatory access to unbundled network elements.[1] The Commission has held that these duties "mandate[] equivalent access to OSS functions that an incumbent uses for its own internal purposes or offers to its customers or other carriers."[2] The Commission has

[1] 47 U.S.C. §§ 251(c)(3) & (4).

[2] Second Order on Reconsideration, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (rel. Dec. 13, 1996) at ¶ 9;

further held that, in order to obtain in-region interLATA relief under Section 271, "equivalent access to OSS" requires the Bell Operating Companies (BOCs) to provide parity (i.e., access to OSS functions that is equivalent to the access the BOC provides itself) where there is a retail analogue as in the case of resale, and to provide an efficient competitor with a meaningful opportunity to compete where there is not retail analogue as in the case of unbundled network elements.[3]

In order to determine whether a BOC is providing parity or a meaningful opportunity to compete, the Commission has indicated that it will "examine whether specific performance standards exist for those functions."[4] In addition, the Department of Justice has stated that it will not support a BOC's Section 271 application for in-region interLATA relief, without the existence of adequate performance measurements. In the Department's view, "[w]ith clear performance benchmarks in place, both competitors and regulators will be better able to detect and remedy any shortcomings in the BOC's delivery of wholesale support systems," and therefore, "the Department will pay close attention to the adequacy of a BOC's established performance measurements."[5]

On May 30, 1997, LCI International Telecom Corp. and the Competitive Telecommunications Association filed a Petition For Expedited Rulemaking which, among other things, sought to have the Commission determine the appropriate

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see First Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (rel. Aug. 8, 1996) at ¶¶ 316, 517.

[3] Memorandum Opinion and Order, In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, CC Docket No. 97-137 (rel. Aug. 19, 1997) at ¶¶ 139-141 ("Michigan Order"); see Memorandum Opinion and Order, In the Matter of Application of BellSouth Corporation, *et al.* Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina, CC Docket No. 97-208 (rel. Dec. 24, 1997) at ¶ 98; and Memorandum Opinion and Order, In the Matter of Application of BellSouth Corporation, *et al.* Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region. InterLATA Services In Louisiana, CC Docket No. 97-231 (rel. Feb. 4, 1998).

[4] Michigan Order at ¶ 141.

[5] Evaluation Of The United States Department Of Justice, In the Matter of Application of SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Oklahoma, CC Docket No. 97-121 (filed May 16, 1997) at pp. 47-48. The Department has drawn similar conclusions in its evaluations of Ameritech's Michigan Section 271 application, and BellSouth's South Carolina and Louisiana Section 271 applications. See Evaluation of the U.S. Department of Justice, Ameritech-Michigan, June 25, 1997 at pp. 38-40; Evaluation of the U.S. Department of Justice, BellSouth-South Carolina, November 4, 1997 at p. 29; and Evaluation of the U.S. Department of Justice, BellSouth-Louisiana, December 10, 1997 at pp. 31-33.

minimum performance standards for each OSS function.[6] This petition was placed on public notice, and comments and reply comments were filed by interested parties, including SBC. The Commission has not yet determined whether it will initiate such a rulemaking. However, significant developments have taken place on the issue of performance measurements which, SBC would submit, render the need for such a rulemaking moot.

Specifically, after the Commission rejected its Oklahoma Section 271 application, SBC began an intense series of discussions with the Department of Justice to resolve, among other issues, the question of performance measurements. SBC's incumbent LEC subsidiaries – Southwestern Bell, Pacific Bell, and Nevada Bell – had already agreed to a number of performance measurements in their interconnection agreements with certain large CLECs. Nonetheless, SBC worked closely with the Department and its performance measurements consultants to develop a comprehensive set of performance measurements that will be implemented in all seven of its in-region states – Arkansas, California, Kansas, Missouri, Oklahoma, Texas, and Nevada. These measurements are designed to demonstrate that Southwestern Bell, Pacific Bell, and Nevada Bell are providing CLECs with parity in the case of resale and/or an efficient competitor with a meaningful opportunity to compete in the case of unbundled network elements.

As a result of these discussions, the Department has approved a comprehensive list of performance measurements and has indicated that these performance measurements "would be sufficient, if properly implemented, to satisfy the Department's need for performance measures for evaluating a Section 271 application . . . ."[7] SBC is proud to report to the Commission that it has agreed to implement the Department's comprehensive list of performance measurements.[8] Moreover, SBC has developed a set of 66 performance measurements for implementation in Southwestern Bell that are in conformance with the Department's comprehensive list of performance measurements.[9] SBC will be implementing a nearly identical set of measures in Pacific Bell and Nevada Bell. The only differences will take into account the differences in OSS, and in processes and procedures for delivering resold services and unbundled network elements in California and Nevada.

---

[6] Petition For Expedited Rulemaking by LCI International Telecom Corp. and Competitive Telecommunications Association, RM 9101.

[7] Letter from Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, U.S. Department of Justice to Liam S. Coonan, Senior Vice President and Assistant General Counsel, SBC Communications Inc., dated March 6, 1998, enclosed herewith as Attachment 1.

[8] Id. at 1.

[9] Enclosed herewith as Attachment 2 is the list of Southwestern Bell's Section 271 Performance Measurements.

SBC believes that the Department's comprehensive list of performance measurements should be all that is necessary to demonstrate that it – or any other BOC, for that matter – is meeting the Commission's standards of parity and a meaningful opportunity to compete. The Department, to its credit, first identified the need for performance measurements in its evaluation of SBC's Oklahoma Section 271 application. The Department also has carefully studied both the need for and scope of performance measurements in the context of its evaluation of the Section 271 applications for Michigan, South Carolina, and Louisiana. The Department developed its comprehensive list of measurements in cooperation with SBC and many other parties. Southwestern Bell's set of 66 performance measurements were developed through an 8 month process, which included extensive meetings and presentations by SBC's subject matter experts to the Department, demonstrations of its OSS to the Department, and on-site visits by the Department and its consultants.

Accordingly, SBC submits that it would be counterproductive, unjustified and a waste of valuable Commission and BOC resources for the Commission to open a docket to develop a different set of performance measurements at some unspecified point of time in the future. The Department's comprehensive list of performance measurements will more than adequately and clearly demonstrate whether the CLECs are receiving parity and a meaningful opportunity to compete. SBC has already expended significant resources in developing and implementing a set of performance measurements in conformance with the Department's comprehensive list of performance measurements. Acceptance of the Department's measurements will thus provide finality on this important issue. Therefore, in considering the BOCs' applications for Section 271 relief, SBC urges the Commission to "give substantial weight to the Attorney General's evaluation" on this issue.

If the Commission should have any questions concerning this letter or the attachments, please do not hesitate to contact me or Marty Grambow at (202) 326-8868. In accordance with the Commission's rules, an original and one copy of this notification are submitted herewith.

Respectfully submitted,

Todd F. Silbergeld

Todd F. Silbergeld
Director-Federal Regulatory

Attachments

cc: Chairman and Commissioners
A. Richard Metzger, Jr., Esq.
Carol E. Mattey, Esq.
Meeting Attendees

# ATTACHMENT 1

U. S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

March 6, 1998

Liam S. Coonan, Esq.
Senior Vice President and
Assistant General Counsel
SBC Communications, Inc.
175 E. Houston Street
San Antonio, Texas 78205

Re: SBC Performance Measures

Dear Mr. Coonan:

As part of the Department's commitment to work with all Bell companies on relevant issues in advance of their section 271 applications, the Department of Justice and SBC Communications, Inc. ("SBC") have, as you know, been spending considerable time discussing issues relating to wholesale support processes and performance measures. In that regard, you have provided us with a draft list of proposed performance measures, a list that you have supplemented as our discussions have progressed.

Attachment A is a comprehensive list of performance measures. With the qualifications set forth below, we are satisfied that the performance measures listed in Attachment A, to which SBC has agreed,[1] would be sufficient, if properly implemented, to satisfy the Department's need for performance measures for evaluating a Section 271 application filed in the not-too-distant future.

We appreciate SBC's engagement with the Department on satisfying our competitive assessment in advance of a filing and look forward to working with you on additional related issues. One such issue is whether the performance measures in Attachment A have been "properly implemented," since the majority of our discussions have dealt with the performance measures themselves and since it is upon the actual measures that this letter focuses. As you can appreciate, there are important repercussions that may arise from how the measures are implemented. For example, definitional issues and other details connected with the measures themselves (such as

[1] As we have discussed with you, the Department has agreed to narrow variances from Attachment A in light of certain SBC processes and procedures. Specifically, we have agreed that SBC need not provide separate operator services and directory assistance speed-of-answer measurements for branded and unbranded calls and that SBC can limit its 911 measurements to an error-clearing interval measure that is presently under development.

the basis upon which due dates and start and stop times are set in particular measures) could significantly affect the meaning of the data. Thus, because we have not yet reached agreement on issues such as data retention, presentation, and reporting (*e.g.*, disaggregation, reporting intervals and formats), and analysis, we expect that Department staff and SBC will continue to work towards resolution of these issues. We also expect that Department staff and SBC will discuss performance standards and benchmarking, other important aspects of the Department's performance analysis.

Moreover, while we are satisfied at the present time that the measures set out in Attachment A would, if properly implemented, suffice for present purposes, performance measurement is a dynamic area and future developments could necessitate changes in our views of appropriate performance measures. For example, while the measures listed in Attachment A are structured to cover the provision of unbundled network elements, once it becomes clear how unbundled network elements will be provided so as to allow requesting carriers to combine such elements in order to provide a telecommunications service, we may find that other measures are necessary to assess performance in this situation. In addition, the development of new services or new methods of providing existing services could necessitate additional performance measures. Alternatively, through ongoing regulatory proceedings, our own investigation, or otherwise, we might learn of additional risks, and even occurrences, of discrimination of which we were not previously aware. Accordingly, we would expect SBC to implement additional measures or modifications to existing measures should it become apparent to the Department that they are necessary. On the other hand, developments might reveal that certain measures were no longer necessary and could be eliminated.

Our satisfaction with the performance measures set out in Attachment A must be placed in its proper context. First, it is limited to the Department's application of its competitive standard. Under section 271, the Department is to evaluate applications for Bell entry using "any standard" the Department believes is appropriate, and the FCC is required to give "substantial weight" to that evaluation. As we have explained, our standard, in addition to the specific statutory prerequisites, requires a demonstration that local markets in a state have been "fully and irreversibly opened to competition," and appropriate performance measures, standards, and benchmarks are important to the Department's application of our competitive standard.

Second, our conclusions relate only to the Department's evaluation of section 271 applications and should not be construed as an expression of the Department's views concerning the appropriate resolution of any federal or state regulatory proceeding relating to performance measures. The FCC and some state commissions have ongoing proceedings considering both performance measures and performance standards, including company-specific and state-specific issues. These proceedings may produce performance measures different from, or in addition to, those described in Attachment A.

I am hopeful that we can resolve the remaining issues expeditiously through our ongoing discussions. I appreciate your cooperation in addressing these issues and look forward to our continuing mutual efforts. If you have any questions or suggestions regarding these issues, please call.

Sincerely,

Donald J. Russell
Chief
Telecommunications Task Force

Attachment A

## PERFORMANCE MEASURES

### I. PRE-ORDERING

1. *Pre-order OSS Availability*: Measures both the hours and days the BOC's pre-order OSSs are available to CLECs and non-scheduled downtime.

2. *Pre-order System Response Times*: Measures, in seconds, the speed with which the CLEC Service Representatives receive information (including rejection and error messages) for processes described below with a customer on the line. These cycle-time measures assume the CLEC has mechanical access to the BOC databases and should be measured in a manner that allows appropriate comparisons to like cycle times experienced by BOC retail service representatives. Times are provided separately for the following functions:

   a. Address verification

   b. Request for telephone number

   c. Request for customer service record (CSR)

   d. Service and product availability

   e. Appointment scheduling

### II. ORDERING

1. *Firm Order Commitment (FOC) Cycle Time*: Measures the average time from CLEC service order submission to BOC response, confirming receipt of a properly formatted and appointed order and committing to complete the order by a specified date. In addition, may be presented as the percentage returned within an agreed upon interval.

2. *Rejected Order Cycle Time*: Measures the average time, from CLEC service order submission to BOC response, for rejecting an incomplete service order or one containing errors. Each submission of an order, up to and including the FOC, requires a response cycle-time result.

3. *Ordering Quality*: The following performance measures are important determinants of service order processing parity or adequacy. Each is important in its own right and provides insights into different aspects of order quality. While the entire set would not be required, Percent Flow Through and either Percent Rejected Orders or Order Submissions per Order are necessary.

   a. *Percent Rejected Orders*: Measured at the BOC gateway, it is the result of dividing rejected orders by total orders submitted, manually or mechanically. It is an adequacy measure because there are no equivalent BOC analogs. BOC orders are "rejected" via automatic edits before the order leaves the service representative position.

   b. *Order Submissions per Order*: Measured at the BOC gateway, it is determined by dividing total order submissions by the number of orders receiving a firm order commitment.

c. *Percent Flow Through*: Measures the percentage of orders that flow from the BOC gateway to acceptance by the BOC service order processor without manual intervention. Orders rejected at the gateway are excluded.

4. *Ordering OSS Availability*: Measures both the hours and days the BOC's ordering OSSs are available to CLECs and non-scheduled downtime.

5. *Ordering Center Availability*: Reports both the hours and days of operation of the BOC ordering center.

6. *Speed of Answer–Ordering Center*: Measures the average time to reach a BOC service representative.

III. PROVISIONING

A. Service Provisioning Interval: Measures the time from customer request for service to completion when the appointment is offered by the BOC, either from a common appointment database, generally used in a resale environment, or by agreed-to appointment intervals, more commonly used in a UNE environment. Service Provisioning Interval should be measured both as a mean, or average interval, and as a percent over a standard interval. Next available appointments offered from the work schedule OSS and expedited requests should be included for measurement; customer-requested due dates longer than the offered appointment should be excluded.

1. *Average Service Provisioning Interval*: Measured in days from end-user request to order completion and counted separately for dispatched and non-dispatched orders.

2. *Percent Service Provisioned Out of Interval*: Measures the percentage of service orders completed in more than an agreed upon number of days. Ideally, measured incrementally by day. For example, orders completed in more than 3 days, 4 days, 5 days, and 6 days. This performance measure depicts the tail of the interval curve. Combined with the Average Installation Interval, portrays a robust picture of provisioning cycle time.

B. Other Provisioning Measures

1. *Percent Interconnection Facilities Provisioned Out of Interval*: Measures the percentage of interconnection facilities (switched trunks and dedicated circuits) provisioned in more than an agreed upon number of days.

2. *Percent Missed Appointments–Company Reasons*: Order completion is measured against the *original CLEC-requested due date*. No due date changes may be made unless explicitly specified by the end user or explicitly agreed to by the CLEC and the BOC. Orders missed for company reasons–load, facilities, or other–are included. Orders missed due to customer reasons are not counted as a miss for purposes of this measure.

3. *Percent New Service Failures* Measures the number of trouble reports on newly provisioned service within an agreed number of days of the original trouble. Studies have shown high correlation between provisioning errors and trouble reports occurring within 10 days and lower correlations beyond 10 days.

4. *Completed Service Order Accuracy*: Measures the extent to which orders are completed by the BOC as ordered by the CLEC.

5. *Orders Held for Facilities*: Measures service orders not completed by the original due date because of a lack of network facilities (including loops and central office equipment) in terms of (a) the average time between the original due date and the final completion date, and (b) the number of pending orders, as of the report date, held beyond a specified period (usually 30 days) following the original due date.

6. *Average Completion Notice Interval*: Measures the average time from order completion to notification of the CLEC for orders submitted on a mechanized basis.

IV. MAINTENANCE

A. Trouble Reporting & Clearance

1. *Trouble Report Rate*: Measured as the number of trouble reports per customer or access line per month.

2. *Percent Repeat Reports*: Measured as the percentage of end-user troubles on the same access line within an agreed number of days of the original trouble. Studies have shown high correlation between repair errors and repeat reports occurring within 10 days and lower correlations beyond 10 days.

3. *Percent Out of Service Over 24 Hours*: Measured as a percentage of out-of-service troubles cleared within 24 hours.

4. *Percent Missed Appointments*: Measures the percentage of trouble reports cleared after the promised appointment. Requires that appointment times, once set, cannot be changed except by the end user.

5. *Mean Time to Repair*: Measured as the average interval from trouble report to clearance.

6. *Interconnection Facilities Restored Out of Interval*: Measures the percentage of interconnection facilities (switched trunks and dedicated circuits) reported out of service and restored after an agreed-to interval. May also be measured and reported as an average interval.

7. *Maintenance OSS Availability*: Measures both the hours and days the BOC's maintenance OSSs are available to CLECs and non-scheduled downtime.

8. *Maintenance Center Speed of Answer*: Measures the average time to reach a BOC repair service representative.

B. Network Quality

1. *Percent Blocked Calls*: Measures trunking grade (quality) of service. Should be provided separately for the following types of trunks:

   a. ILEC End Office to CLEC End Office Trunk Groups

   b. ILEC Tandem to CLEC End Office Trunk Groups

   c. ILEC Tandem to and from ILEC End Office Trunk Groups

V. BILLING

1. *Bill Timeliness*: Measures the percentage of billing records delivered within an agreed-to interval. Should be provided for the following billing information provided to CLECs:

    a. Daily Usage File (DUF): Measures, from message creation to the availability of the usage information to the CLEC, the percentage of DUF's provided within the interval.

    b. Wholesale Bill: Measures the percentage of wholesale bills issued within an agreed-to number of days following the end of the billing cycle.

2. *Bill Completeness*: Measures the percentage of complete billing records for usage charges, recurring charges, and non-recurring charges provided to CLECs. Should be measured after bills are released. Under approved conditions, sufficiently robust pre-release test and audit procedures could substitute for a post-release audit.

    a. Usage: Measures unbillable usage and usage from the current bill cycle not included on the current wholesale bill.

    b. Recurring Charges: Measures current bill cycle recurring charges not included on the current wholesale bill.

    c. Non-Recurring Charges: Measures non-recurring charges completed in the current bill period not included on the current wholesale bill.

3. *Bill Accuracy*: Measures the percentage of accurate billing records for usage charges, recurring charges, and non-recurring charges provided to CLECs. Should be measured after bills are released. Under approved conditions, sufficiently robust pre-release test and audit procedures could substitute for a post-release audit.

VI. OTHER

1. *Operator Services Toll Speed of Answer*: Measures raw interval in seconds or as a percentage under a set objective. Should be provided separately for unbranded and branded service.

2. *Directory Assistance Speed of Answer*: Measures raw interval in seconds or as a percentage under a set objective. Should be provided separately for unbranded and branded service.

3. *911 Database Update Timeliness and Accuracy*: Measures the percentage of missed due dates of 911 database updates and the percentage of accurate updates.